

JUL 30 2009

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

FRANCISCO JAVIER RODRIGUEZ-
VELEZ; et al.,

Petitioners,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 07-73300

Agency Nos. A095-442-854

A095-442-855

A095-442-856

A095-442-857

MEMORANDUM *

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted July 29, 2009**

Before: WALLACE, LEAVY, and HAWKINS, Circuit Judges.

Francisco Javier Rodriguez-Velez, Irma Tamayo-Flores, and their two daughters, natives and citizens of Mexico, petition pro se for review of the Board of Immigration Appeals' ("BIA") order denying their motion to reopen removal

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

proceedings. Our jurisdiction is governed by 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen, *Singh v. INS*, 295 F.3d 1037, 1039 (9th Cir. 2002), and review de novo constitutional challenges, *Ram v. INS*, 243 F.3d 510, 516 (9th Cir. 2001). We deny in part and dismiss in part the petition for review.

The BIA did not abuse its discretion by denying petitioners' motion to reopen, because the BIA considered the evidence petitioners submitted and acted within its broad discretion in determining that the evidence was insufficient to establish prima facie eligibility for cancellation of removal. *See Singh*, 295 F.3d at 1039 (The BIA's denial of a motion to reopen shall be reversed only if it is "arbitrary, irrational or contrary to law.").

Petitioners' equal protection claims fail because Congress comported with equal protection when it repealed suspension of deportation for aliens placed in removal proceedings on or after April 1, 1997. *See Vasquez-Zavala v. Ashcroft*, 324 F.3d 1105, 1108-09 (9th Cir. 2003); *Sandoval-Luna v. Mukasey*, 526 F.3d 1243, 1247 (9th Cir. 2008) (per curiam).

To the extent that petitioners seek review of the BIA's April 13, 2007, order dismissing their appeal from an immigration judge's ("IJ") removal order, we lack jurisdiction because the petition for review is not timely as to that BIA order. *See*

8 U.S.C. § 1252(b)(1) (petitions for review must be filed no later than 30 days after the date of the final order of removal); *see also Singh v. INS*, 315 F.3d 1186, 1188 (9th Cir. 2003). We also lack jurisdiction to review petitioners' unexhausted contention that the IJ exhibited bias. *See Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004).

PETITION FOR REVIEW DENIED in part; DISMISSED in part.